INFORMATION for *Erskine Catto*, Daughter to *James Catto* Servant to the Earl of *Kintore*, and the said *James Catto* as Administrator-in-law to her, for his Interest, and also as Assigny to *John Catto*, Son to *William Catto* in *Green* of *Udney*, PURSUERS;

Against Alexander Gordon *of* Auchleuchries, *and* Charles Gordon, *Son to the deceas'd* James Gordon *at* Meikle-mill *of* Eslemont, DEFENDERS.

IN *May* 1742, *James Catto* Merchant in *Ellon*, now deceas'd, executed a Testament, whereby he named the said *Alexander* and *James Gordons*, his Mother's Brothers, his Executors, and burdened them with Payment of his Debts and Funeral-charges, and three small Legacies to his Relations upon the Father's Side, in these Words.

"And further, that my Legatars pay, within Year and Day, *L.* 100 *Scots* to "*John Catto*, Son to *James Catto* sometime in *Ellon*, out of the Rents of my House in "*Ellon*; and I leave and bequeath to *William Catto* in *Green* of *Udney* his Son *John*, 400 "Merks out of the first and readiest Money that shall accresce on the Sale of my Houses "and Feu in *Ellon*; and the like Sum to *Catto*, Daughter to *James Catto* Son "to the above designed *James Catto*, Servant to the Earl of *Kintore*."

After the Testator's Death, the Executors took Possession of his whole moveable Effects, and uplifted the Debts due to him, which were pretty considerable, it is believed not under the Value of 4 or 5000 Merks, after Payment of Debts; though the Inventary given up in the confirmed Testament does not amount to near so much: Yet they scruple to pay the two last of the three Legacies above mentioned, though these were all the Tokens the Testator had left to his Father's Relations, who, but for this Testament, must have succeeded to him in the whole; and that upon this Pretence, That the 400 Merks to *John Catto* is to be paid out of the first and readiest Money that shall accresce on the Sale of the Testator's Houses and Feu in *Ellon*, which did not fall to the Executors, but to *James Catto* the Heir. And the like Objection was made to the last Legacy of 400 Merks left to *Erskine Catto*, because it is immediately subjoined to the other; although the Testament does not say that it was to be paid out of the said Price, but simply bequeaths the Sum to be paid to her, as your Lordships have observed from the Clause.

The Legatars not being able otherwise to recover Payment of these small Sums, which was all the Testator thought fit to leave them out of his Executry, which he gave away from them to Relations who by Law would never have succeeded, were obliged to insist in a Process before the Commissary of *Aberdeen*; who, after a very full Debate, found the Legacies due. And the Defenders having brought the Process to this Court by Advocation, the Lord *Tinwald* Ordinary has thought fit to take the Debate to Report.

And, in the *first* place, The Lords will remember, that the Authors of the *Roman* Law, who have been so careful to lay down the most rational Rules for the Construction of Last-wills, and whose Judgment in these Matters is generally followed by this as well as by most other Nations, have, amongst many other Rules, uniformly agreed in this, That a Legacy bequeathed by the Testator is not rendered ineffectual because of an Error in the Description of the Thing bequeathed; and still less, if the Error occurs only in the Description of the Fund out of which the Legacy is to be paid. And the Reason is evident: The Bequeathment of the Legacy proves the Testator's Intention to honour the Legatar: And though he has erred in the Description; yet, as it is not certain that the Error was the sole inductive Cause of the Legacy, such Error is not sufficient to disappoint the Claim of the Legatar who is in Possession of the Testator's Will. No Irritancy is to be implied in such Bequeathments, unless it is particularly expressed: For, as the beneficial Construction and fair Execution of Last-wills is in effect a Trust reposed by Defuncts in the Law, it would no ways answer this Trust, to allow them to be evacuated and defeated by any Conjecture or Construction which is not necessarily founded in the Will.

And therefore, though a Legacy may be affected by an Error in the Description, where the Description is absolutely necessary for discovering the Testator's Will; as if he legates to *Sempronius* a Debt due to him by *Mævius*, or the Liberation of a Debt which *Sempronius* the Legatar owes the Testator: In such Cases, if there is no Debt due by the Legatar, or by *Mævius*, the Legacy can have no Effect; because the Liberation or Action legated does not exist. But, in all Cases where it can possibly have Effect, it is found effectual, the Error

in

in the Deſcription notwithſtanding. For inſtance: A Teſtator believes, that he got an Eſtate, or a Sum of Money in Tocher with his Wife, when he got none; and he bequeaths to her ſuch Eſtate or Sum, *fundum Cornelianum quem illa mihi doti dedit, ei heres dato*; or he believes he was Debitor to *Sempronius*, when he owed him nothing, and leaves him the Sum in Legacy, *centum quæ Sempronio debeo, ei do, lego.* In all ſuch Caſes where a ſpecial Sum or Subject is mentioned in the Will, ſo that *conſtat quid legare voluit*, though the Deſcription is laid aſide as ſupervacaneous, the Error in the Deſcription is never allowed to fruſtrate or avoid the Teſtator's Will, but the Rule takes place, *Falſa demonſtratio non vitiat legatum*; as appears from numberleſs Inſtances ſet forth in the *Roman* Law, *l.* 75. § 1. *ff. De legat.* 1. *l.* 88. § 10. *ff. De legat.* 2. *l.* 40. § 4. *De cond. & demonſtrat. l.* 2. § 8. *De dot. prælegat.* In which laſt Law, it is laid down as a general Rule, That *quicquid demonſtrandæ rei additur ſatis demonſtratæ, fruſtra eſt*, and can have no Effect to annul the Legacy.

And this Rule obtains ſtill more ſtrongly in Caſes where the *erroneous Deſcription* is adjected, not to the *Legacy* itſelf, but to another *Subject* or *Fund* out of which it is to be paid. Here there is no place for the above Diſtinction obſerved in the *demonſtratio rei legatæ*, whether it is *neceſſaria rei deſignandæ* or not: But whether it is or not, the Legacy is effectual. And the Reaſon is, That though the Fund allotted by the Teſtator ſhould be found not to exiſt, or not to belong to him, his Will can ſtill have Effect by Payment of the Legacy out of other Funds; and, if it can, it ought to have it. This is diſtinctly laid down by *Voet*, from many Texts of the Civil Law, *tit. De cond. & demonſtr.* N°. 5. *Quòd ſi falſa demonſtratio non ipſi rei legatæ adſcripta ſit, ſed rei alteri, ex qua teſtator legatum præſtari jubet, legatum non vitiat, ſive demonſtratio deſignandæ rei neceſſaria ſit, ſive res, unde legatum ſolvendum eſt, abſque demonſtratione illa nuſquam apparitura eſſet.*

And ſo much is this true, that, ſhould the Teſtator afterwards diſpoſe of the Fund out of which he had appointed the Legacy to be paid, this will not import a Repeal of the Legacy, though ſuch Repeal is inferred where a ſpecial Subject is bequeathed to a Legatar, and afterwards diſpoſed of. And the Reaſon is, That, when a Fund is mentioned, it is always underſtood to be *demonſtrativè* only, and not to import a Reſtriction or Limitation of the Legacy. Thus *Voet*, in the Paragraph above quoted, *Idemque obtinet, ſi res demonſtrata, ut inde legatum ſolvatur, ab initio quidem extiterit, ſed vivo teſtatore eſſe deſierit.* And he refers, amongſt others, to an elegant Text from *Julian*'s *Digeſts*, *l.* 96. *pr. De legat.* 1. where a Teſtator had bequeathed 400 *aureos* to *Pamphila* to be paid out of ſuch and ſuch Funds; and, before his Death, he converted all theſe Funds to other Uſes: yet it is determined, that the Legacy ſubſiſts, and muſt be paid by the Heir.

And as theſe Rules of the Civil Law are founded in Equity, and in the rational Conſtruction which Teſtators expect to be made of their Settlements; ſo they have been cloſely adhered to by this Court in deciding Queſtions of the like Nature. *Spottiſwoode* and *Durie* do both take notice of a Caſe decided *January* 22. 1624, *Drummond contra Drummond*; where a Teſtator left *L.* 1000 in Legacy to be paid out of an heritable Debt due to him; and the Executor having objected, That the Fund out of which it was to be paid belonged to the Heir, the Lords found, "That albeit the Legacy could not receive Effect by Payment out "of that Sum particularly; yet, nevertheleſs, that the Legacy remained good to affect the "Defunct's other Moveables with the Payment thereof, if he had as many as might ſatisfy "the ſame; and therefore admitted to the Purſuer, to prove, that there was more Move-"ables left by the Defunct, and intromitted with by the Executor, than might ſatisfy the "foreſaid Legacy." And *Spottiſwoode*, *tit. Legacies*, obſerves the *ratio decidendi* thus: *The Lords found, that the wrong Deſtination of the Money ſhould not fruſtrate the Legatar.* Your Petitioner can diſcover no Difference betwixt the Caſe of this Deciſion and the preſent Caſe. And it is equally plain, that the *ratio decidendi* aſſigned in it is preciſely the ſame with the Rule laid down in the Civil Law for determining ſuch Caſes, *Falſa demonſtratione non vitiatur legatum.*

Another Caſe is obſerved by Lord *Stair*, decided 16th *June* 1664, *James Murray contra* the Executors of *Katharine Rutherford*; where *Katharine Rutherford* having left *James Murray* a Legacy of 600 Merks, whereof, ſays ſhe, 200 Merks is in his Hand due to me by Bond; this Bond had been afterwards found to belong to *Katharine Rutherford*'s Huſband, and by him uplifted: yet the Lords found the Wife's Executors were liable to pay the whole Legacy of 600 Merks, and that no Abatement was to be given upon account of this Bond, which ſhe had pointed out, as well as other Funds for Payment of this Legacy.

Sir *John Niſbet* obſerves two Caſes to the ſame Purpoſe. The firſt indeed occurred in the Conſtruction of a Deed *inter vivos*, *July* 17. 1667, *Harmiſton contra* Lord *Sinclair*: "*Harmiſton* being bound to pay to the Lord *Sinclair* his Brother, *out of the firſt and rea-*"*dieſt* of the Rents of the Eſtate of *Sinclair*, a certain Annuity;" the Lords found,

"That

" That he ought to pay the ſaid Annuity entire, though he pretended he was not obliged " ſimply, but out of the Rents; and that the ſaid Rents, in reſpect of the real Burdens up- " on the Eſtate, and the low Rates of Victual, would not extend to ſatisfy the ſame, ſee- " ing he was obliged to pay *out of the firſt and readieſt.*"

The other Deciſion is in the Caſe of a *Legacy*, *July* 11. 1676, *Finlay contra Little.* " A Legacy being left in theſe Terms, *viz.* That it ſhould be paid out of the Teſtatrix her " Houſhold-pleniſhing, and Debts due upon Compts;" the Lords found, " That albeit " the ſaid Pleniſhing and Debts ſhould not extend to ſatisfy the ſaid Legacy, that it was not " a limited Legacy, but ought to be ſatisfied out of the other Executry; and that the ſaid " Words were only *executiva* as to the Order and Way of Payment in the firſt place, and " *interpretatio* ſhould be *ut actus valeat*; eſpecially ſeeing the Legatar was the Defunct's " Relation; and it is to be preſumed, that the foreſaid Qualification was only as to the Way " of Payment."

Thus the Deciſions of the Court appear cloſely to have followed the Principles of the Common Law. And hardly can a Caſe occur, where there is better Reaſon to adhere to them, than in the preſent. The Defunct, by this Teſtament, gives away his whole Executry, which was very conſiderable, to two Relations on the Mother's Side, who could never have ſucceeded to him; and leaves nothing to *William Catto*, his neareſt Relation on the Father's Side, who by Law would have ſucceeded to the whole Executry, but this ſmall Legacy of 400 Merks to his Son *John*, not a tenth part of his Executry. And although he points out the Price of his Houſes in *Ellon*, as a Fund out of which the Legacy might be paid, (and this Fund fails, by reaſon the Houſes were never ſold by the Teſtator, and therefore muſt deſcend to *James Catto*, his Heir); yet there is no Ground to imagine, that he intended the Legacy ſhould be void, in the Event of the Failure of that Fund. The *præſumptio voluntatis* lies ſtrongly otherwiſe, not only from the Circumſtances of the Relation to whom this Legacy is left, whoſe Father, but for this Teſtament, would have taken the whole moveable Succeſſion, but alſo from the Anxiety he expreſſes in his Will, that theſe Legacies ſhould be made effectual. A full Copy of the Will is hereto annexed: And though it is ſhort; yet this Anxiety is expreſſed by two repeated Clauſes. *1ſt*, He makes over " his haill Goods, " Gear, outſight and inſight, Corns, Crop, Cattle, Horſe, and all Beſtial, with Bonds, " Bills, and Sums of Money, and generally all that to him any other way appertains, to " and in favours of *James* and *Alexander Gordons*, his Uncles, under the *Limitations* and " *Reſtrictions* after following:" And theſe are the Payment of his Funeral-charges and Debts, and the Payment of theſe *three* ſmall *Legacies*.

And, after ſpecifying the Legacies, he again adds, " And, on the above *Conditions* and " *Reſtrictions*, I appoint my above Uncles my Executors and univerſal Legatars, *&c.*"

By both theſe Clauſes, it is manifeſt, that the Defunct named the ſaid *James* and *Alexander Gordons* his Executors, and gave them Right to his Moveables, expreſſly under *Condition* of their paying theſe ſmall Legacies to his other Relations: And therefore it is, with Submiſſion, abſurd to plead, that his pointing out a Fund for their more ready Payment, which afterwards failed, by his not ſelling the Houſes, ſhould evacuate a Legacy with which he burdens the Grant of his Moveables to theſe Executors, when the Moveables they have taken by it are not denied to be ſufficient to clear all his Debts and Legacies; and alſo to leave a very conſiderable Reſidue, which is to go to their own Profit, in virtue of this Will; the Implement whereof they now diſpute.

In behalf of the Executors, it was pled, " That the Rules of the Civil Law cannot ap- " ply to the Law of *Scotland*, becauſe the Civil Law made no Diſtinction betwixt the Suc- " ceſſion of Heritage, and Moveables; whereas our Law forbids Heritage to be burdened, " or conveyed by Teſtament: And therefore, if a Teſtator attempts ſo to convey or bur- " den it, his Deed is ineffectual, for want of Power, and can infer no Warrandice againſt " his Executors. And, for this, Reference was made to Lord *Stair*'s *Inſtit. tit. Executry*, " *par.* 41; and the Deciſion there quoted, *February* 21. 1663, *Wardlaw contra Fraſer* of " *Kinmundy*; and alſo to the following Deciſions, 7th *February* 1566, obſerved by *Mait-* " *land*, *November* 26. 1674, *Paton contra Stirling*, obſerved by Lord *Stair*, and *No-* " *vember* 22. 1698, *Cumming contra Cumming*, obſerved by Lord *Fountainhall*; all refer- " red to in the *Dictionary*, under the Title, *Quod potuit non fecit*, *vol.* 2. *p.* 308; and " whereby it was found, That a Conveyance of heritable Subjects in a teſtamentary or " Deathbed-deed, did not infer Warrandice againſt the Executor."

And there was alſo ſome Streſs laid upon this, " That the Teſtament does not injoin the " Executors to pay the Legacies in queſtion; but leaves and bequeaths theſe Sums to them " out of the firſt and readieſt of the Money that ſhould accreſce on the Sale of the Houſes; " which is plainly a *legatum ſpeciei* bequeathed *ſinendi modo*, and imports no more, but that

" the

" the Executors ſhould not traverſe the Defunct's Will, but allow the Legatars to draw " theſe Sums out of the Price of the Houſes when they ſhould come to be ſold; but by no " means that they ſhould pay theſe Sums out of the other Executry, if the Houſes ſhould " belong to the Heir, and the Price thereof never accrue to the Executors."

But the Defenders would need to adduce ſome very ſtrong Authority before they can ſatisfy your Lordſhips, that the Rules laid down in the Civil Law will not take place with us, when they appear to be ſo evidently founded in Equity and good Reaſon, and therefore adopted into the Practice of moſt modern Nations, and ſo literally followed and adhered to in the ſeveral Deciſions already mentioned. Nor do the Deciſions referred to by the Defenders at all interfere with this Doctrine. The Point eſtabliſhed by the Deciſions 1674 and 1698 is, That where a Deed *inter vivos* is reduced upon the Head of Deathbed, the Executor is not liable to warrant the ſame to the Grantee out of the Executry; and that for this Reaſon, that the Deed is voided becauſe of a Defect of Power in the Granter, which he did not know of at the Time of the Deed; as he might then have lived as long as it was neceſſary to ſupport it: And though he might have burdened his Executor with the Warranty of it; yet he did it not. *Quod potuit non fecit.*

In the old Deciſion 1566, obſerved by *Maitland*, Heirſhip-moveables were left directly in Legacy by Teſtament, which could not be effectual: And the Executor was found not obliged for the Value, becauſe it was underſtood, by the Conception of the Teſtament, that the Executor was bound only to a *Non repugnantia*, and to allow the Legatar to take the Heirſhip for any Right he had; but not to warrant or make good the Legacy. And the Caſe betwixt *Wardlaw* and *Fraſer*, in 1663, ſeems to be to the ſame Purpoſe, as Lord *Stair* obſerves it in his *Inſtitutions*, *viz.* That a Wadſet of Lands being left in Legacy by Teſtament, the Executor was not bound to make it good; though, in his Collection of *Deciſions*, he obſerves no other Point decided, but that the Legacy was found not effectual againſt the Heir, further than to the Extent of her Huſband's Intereſt, who had homologated the ſame.

But this Exemption of the Executor from being liable to make good the Value of an heritable Subject left in Teſtament, though favoured by theſe two Deciſions, cannot be conſidered as a ſettled Point. For your Lordſhips will obſerve the contrary decided, in a Caſe obſerved, and very fully reaſoned upon, both by Lord *Stair* and *Dirleton*, *December* 2. 1674, *Cranſton contra Brown*; where the Lords found an Executor liable to make good the Legacy of an heritable Sum left in Teſtament, as being in Effect *legatum rei alienæ ſcienter legatæ*. And, in another Caſe, *June* 24. 1664, *Falconar contra Dougal*, they found, That a Legacy of a Bond, which a Teſtator had aſſigned away to the Executor before his Teſtament, behoved to be made good by the Executor, upon the ſame Principle, That it was a *legatum rei alienæ*. And both theſe Deciſions are referred to by Lord *Stair*, in his *Inſtitutions*, *tit. Executry*, § 41.

And therefore, did the preſent Caſe depend upon that Queſtion, it would fall to be conſidered, which of theſe Deciſions are beſt founded. Nor can the Purſuer ſee a good Reaſon, why an Executor ought not to make good the Legacy of an heritable Subject, when the Moveables are ſufficient to anſwer it, as well as the Value of any other Subject that is truly *res aliena*: For, whether it does not at all belong to the Teſtator, or belongs to him but ſo as he cannot diſpoſe of it in that Manner, ſeems to be the ſame, as to the Principles upon which Legacies *rei alienæ* are ſuſtained; as is very well reaſoned by Lord *Stair* and *Dirleton* in the above Deciſion.

But then, we apprehend, that, whichever of thoſe Deciſions are followed, the Legacy now in queſtion ought to be ſuſtained: For the very Ground of the Deciſions, exeeming Executors from making good the Legacy of an heritable Subject, is, That the Subject left was without the Power of the Teſtator, and of itſelf could not be effectual; and though he might have burdened the Executor to pay the Value, yet he did it not. *Quod potuit non fecit.*

Here the Reverſe is the Caſe. The Subject he leaves is a Sum of Money; the Executors are bound to pay it; and they have ſufficient Effects to pay it: *Ergo*, He did nothing without his Powers. *Fecit quod potuit.* And his expreſs Will is not to be defeated, becauſe he points out *demonſtrativè* a Fund for the more ready Payment, which happened not to be made effectual, as he died without ſelling it himſelf, and the Subject thereby deſcended to his Heir.

The Defenders mentioned a Deciſion, " *January* 21. 1673, *Forbes contra Forbes*, where " a Legacy having been bequeathed out of the Reſts due by the Teſtator's Tenants, was " found not preſtable, further than to the Extent of theſe Reſts." But, as the Clauſe in this Teſtament is not tranſcribed in the Deciſion, it is probable ſome Indication may have thence

thence appeared of the Teſtator's Will, that the Legacy was to be confined to thoſe Arrears: And the Legatars ſeem the leſs to have ſtruggled this Point, that they got the Executor found liable to accompt for exact Diligence againſt the Tenants, for Recovery of the Arrears whereby the Legacies might be cleared.

And as to the Criticiſm ſuggeſted by the Defenders, " as if there was a Difference in the " Style of the Teſtament, betwixt the firſt Legacy, which is made obligatory upon the Ex- " ecutors, and the other two, which are left only *ſinendi modo*, and in ſo far as the Lega- " tars can, in virtue of the Teſtament, affect the Houſe out of which they are appointed to " be paid;" When your Lordſhips peruſe the Copy of the Teſtament, it is believed you will be ſatisfied there is nothing in the Obſervation. The Defunct expreſſes as great an Anxiety, as he could well do in ſo ſhort a Paper, to have the whole Legacies duly paid. He leaves his whole Goods and Gear, and Sums of Money, to the Executors, expreſſly under that *Condition*. And it is his Anxiety for the Payment of this ſmall Legacy to *John Catto* in particular, that makes him point out this as a Fund, *out of the firſt and readieſt* of which it ſhould be paid: The plain Import of which is, That, if this Fund ſhould anſwer more readily than any other belonging to the Executors, it ſhould be applied for that Purpoſe: But there is not a Word in the Teſtament that inſinuates, that the Legacy ſhould be void in caſe theſe Houſes ſhould not be ſold, but deſcend to his Heir. And indeed it is inconſiſtent to ſuppoſe, that a Man would expreſs ſo ſtrong an Anxiety to have a Legacy made effectual to a Relation, to whom he was under ſo great Obligation to leave it, as being by Law his neareſt Succeſſor in the whole Executry; and yet, with the ſame Breath, ſhould mean to defeat it by an impoſſible Condition. Such Conſtruction would be extremely contrary to the Genius of the Law, which always favours the benign Interpretation of laſt Wills, and will not allow them to be fruſtrated upon a Clench, which appears to have no Foundation in the Intention of the Teſtator.

The Purſuer has argued the Caſe with reſpect to the Legacy left to *John Catto*. As to the other Legacy left to his own Daughter, *Erſkine Catto*, he apprehends it is ſimple, and has no Concern with the Adjection annexed to the former Legacy; and therefore the Defenders Objection does no ways apply to it; and for that he appeals to your Lordſhips for Peruſal of the Teſtament, which is hereto annexed. Nor had the Lord Ordinary any Difficulty as to this Legacy: But, as the Defenders made a Queſtion of it, his Lordſhip allowed both to go together in the Report, that the Cauſe might not be divided.

In reſpect whereof, &c.

JAMES FERGUSON.

JAMES CATTO's TESTAMENT.

KNow all Men, by theſe Preſents, me *John Catto* Merchant in *Ellon:* Foraſmuch as I am at preſent diſeaſed in Body, though ſound in my Memory and Judgment, to have made my Latter-will and Legacy, in manner after following: That is to ſay, I commit my Soul to the Mercy of God, my great Creator, through the Merits of Jeſus Chriſt, for Salvation, and my Body to be decently interred in the Church-yard of *Ellon*, and my haill Goods, Gear, outſight and inſight, Corns, Crop, Cattle, Horſe, and all Beſtial, with Bonds, Bills, and Sums of Money, and generally all that to me any other ways appertains, to and in favours of *James Gordon* in *Meikle Mill of Eſlement*, and *Alexander Gordon* of *Auchleuchries*, my Uncles, *under the Limitations and Reſervations after following:* That is to ſay, my foreſaid Executors are hereby bound to bear the Charges of my Interment and Funerals; *item*, That they pay all my lawful Debts; and further, That my Legatars pay, within Year and Day, *L.* 100 *Scots* to *John Catto*, Son to *James Catto* ſome time in *Ellon*, out of the Rents of my Houſe in *Ellon*. And I leave and bequeath, to *William Catto* in *Green of Udny* his Son *John*, 400 Merks, out of the firſt and readieſt Money that ſhall accreſce on the Sale of my Houſes and Feu in *Ellon*; and the like Sum to *Catto*, Daughter to *James Catto*, Son to the above deſigned *James Catto*, and Servant to the Earl of *Kintore*. And, *on the above Conditions and Reſtrictions*, I appoint and conſtitute my above Uncles my Executors and univerſal Legatars in all and haill my Stock and Fortune, and to diſpoſe of the ſame; and to call for and uplift all Sums of Money due me, and grant Diſcharges therefor; which ſhall be as valid as if I had granted the ſame in my Lifetime. And I finally conſent to Regiſtration. Signed, at *Ellon*, 4th *May* 1742, before theſe Witneſſes, &c.